



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: General
23 June 2014
English
Original: French

**Committee against Torture
Fifty-second session**

Summary record of the first part (public)* of the 1220th meeting
Held at the Palais Wilson, Geneva, on Monday, 5 May 2014, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the second part (closed) of the meeting.

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GE.14-43138 (E) 200614 230614



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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Initial report of the Holy See (CAT/C/VAT/1)

1. *At the invitation of the Chairperson, the delegation of the Holy See took places at the Committee table.*

2. **Monsignor Tomasi** (Holy See) said that the Holy See had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in June 2002 on behalf of the Vatican City State, over which it exercised sovereignty. In the interpretative declaration that it had submitted at the time of its accession to the Convention, the Holy See had affirmed its commitment to the provisions of the Convention and stated that it would undertake to apply it insofar as it was "compatible, in practice, with the peculiar nature of that State". In accordance with that declaration, the Holy See, whose international legal personality was not to be confused with that of the territories over which it exercised State sovereignty, asserted that the Convention applied exclusively to the territory of the Vatican City State. The legal system of the Vatican City State was different from that of the Catholic Church, which meant that not all canonical norms were applicable there. The Holy See had therefore adopted laws criminalizing illicit activities and prescribing penalties proportionate to the gravity of offences. However, given the small size of the territory, the crime rate was very low and the need for a penitentiary system was minimal.

3. A number of developments relating to the Convention had taken place since the drafting of the report in December 2012. The first concerned amendments made to the legislation of the Vatican City State following the promulgation of the apostolic letter of Pope Francis on the jurisdiction of the judicial authorities of the Vatican City State in criminal matters on 11 July 2013. Specifically, article 3 of Law No. VIII, which dealt expressly with the crime of torture, had been amended. The new text, which had been incorporated into the Criminal Code, reproduced practically verbatim the definition of torture contained in article 1 of the Convention and prescribed appropriate penalties. Article 3, paragraph 6, of Law No. VIII was based on article 15 of the Convention and expressly prohibited the use of any statement obtained by means of torture as evidence in legal proceedings. Law No. IX had also been amended in order to clarify such matters as what offences were punishable under that law, and matters relating to court jurisdiction, extradition and sentencing. Those amendments were intended to give effect to articles 3, 5 and 8 of the Convention and were the direct result of the Holy See's accession to that instrument. One of the amendments stated that the extradition of any person to a State likely to practise torture was prohibited.

4. It should be stressed that the Holy See did not have jurisdiction, under article 2, paragraph 1, of the Convention, over every member of the Catholic Church. Members of the Catholic Church were not answerable to the Holy See for their actions but to the authorities of the country where they resided, in accordance with the national laws of the country concerned. That principle applied to all the acts mentioned in the Convention and to any other reprehensible act similar to torture committed by a person affiliated with a Catholic institution. Having made the necessary amendments to its criminal law to bring it into conformity with the Convention, the Holy See believed that it had fulfilled its obligations under that instrument in good faith and intended to pursue its efforts to promote a culture of respect for human rights.

5. **Ms. Gaer** (Country Rapporteur), recalling the content of general comment No. 2 on the implementation of article 2 by States parties, particularly with regard to the State's

obligation to prevent torture, which applied "to all persons who act, de jure or de facto, in the name of, in conjunction with [...] the State party", noted with concern that the State party's interpretative declaration effectively placed representatives and official members of the Catholic Church outside the scope of the Convention. The Convention should apply to the Holy See as a whole and to all the bodies placed under its authority, not only to the Vatican City State, as was currently the case. She asked whether the State party considered the interpretative declaration to be consistent with the purposes of the Convention and whether it was conducive to preventing acts of torture from being committed in all jurisdictions under the authority of the Sovereign Pontiff.

6. She congratulated the State party on having incorporated a definition of torture into its laws that was in conformity with the one contained in article 1 of the Convention and invited the delegation to explain whether the criminal law of the Holy See prohibited any attempt to commit torture and any act which constituted complicity in torture. She said that she would also like to know whether a statute of limitation had been established for acts of torture. Quoting from Law No. VIII, she said she took it that the prohibition on torture only applied to police officers, persons vested with legal authority, law enforcement officers and those under their authority. That ran counter to the requirements set out in the apostolic letter of Pope Francis, which stated that the prohibition on torture applied to all persons vested with an official function within the Catholic Church. She, therefore, wished to know whether the State party planned to extend the scope of that prohibition in the Criminal Code to include all members of the Roman Curia and the diplomatic personnel of the Holy See. She also wished to know whether the State party planned to amend the basic rules to which members of the clergy had to adhere in the exercise of their ministry, such as those laid down by the Congregation for the Doctrine of the Faith prohibiting all acts of torture and other cruel, inhuman or degrading treatment or punishment.

7. She recalled, as stated in the Committee's general comment No. 2, that article 2, paragraph 2, of the Convention provided that the prohibition on torture was absolute and inderogable and that no exceptional circumstances whatsoever could be invoked by a State party to justify torture in any of the territories under its jurisdiction. She wanted to know, specifically, whether all the public officials of the State party, including the Swiss Guards and the gendarmes, were familiar with the Convention, applied it and could be punished if they failed to respect the rules enshrined therein. She also wished to know what measures were taken against members of the clergy who committed acts of sexual abuse, particularly against children. Had the Holy See taken steps other than defrocking priests or transferring them to other dioceses, which were disciplinary measures, to prevent such acts and punish the perpetrators? It would be interesting to know the exact number of cases of sexual abuse and paedophilia in which legal proceedings had been initiated against members of the clergy; to hear about civil and criminal investigations conducted into such cases; and to know more about the guidelines issued to dioceses by the Congregation for the Doctrine of the Faith on that subject. She would also like to receive information on the measures taken to allow victims and witnesses to file a complaint without fear of reprisals. In that context, it would be interesting to hear about the amendment of the regulations governing the vow of silence applicable to members of certain religious orders.

8. She noted that the absolute prohibition of abortion could, in certain cases, be in conflict with the Convention, particularly when the case involved the rape of a minor. Referring to cases in which girls aged between 9 and 10 who had been raped and fallen pregnant had ended up committing suicide, she enquired as to the attitude of the Holy See in such circumstances. She also wished to receive clarification on its position on therapeutic abortion.

9. As to article 3 of the Convention, she requested information on the number of asylum applications that the State party had received and the number of persons that it had

extradited. As to articles 4 to 8 of the Convention, she said that she wished to receive additional information on the jurisdiction of the State party in respect of perpetrators of offences under article 4 where the alleged perpetrator or victim was a national of the Holy See. She also wished to know how many people had been prosecuted in that framework before the Criminal Code had been revised and since the revised text had entered into force and, more particularly, how the Holy See intended to apply article 8 of the Convention in its new legal order. In particular, what would become of the concordats that the Holy See had concluded with Austria and Italy? It would also be interesting to learn more about the decision of the Holy See to deny the extradition request submitted by the Polish State prosecutor for the former Apostolic Nuncio in the Dominican Republic, Archbishop Jozef Wesolowski, who was suspected of paedophilia.

10. **Mr. Tugushi** (Country Rapporteur) said that he wished to know what measures the Holy See had taken to familiarize the members of the Catholic clergy, congregations and religious orders with human rights and, more specifically, with the Convention. Referring to article 12 of the Convention, he said that the recent words of Pope Francis held the promise of change in the face of the impunity hitherto enjoyed by members of the clergy who had sexually abused children. Recalling that, according to the article in question, the authorities were required to conduct an impartial investigation without delay whenever there were reasonable grounds to believe that an act of torture had been committed in any of the territories under their jurisdiction, he requested additional information on the number of complaints received, investigations opened and penalties imposed, as well as statistics on the number of persons who had infringed the provisions of the Convention. He also invited the delegation to indicate whether the State party had introduced a mechanism to protect victims and witnesses against reprisals. In addition, he said he wished to remind the State party that the provisions of article 14 were universally applicable. Noting that many allegations had been made concerning attempted intimidation of victims and inadequate compensation, he asked what measures had been taken to guarantee the victim of an act of torture the right to redress and to be fairly compensated, including the means necessary for the fullest possible rehabilitation. Returning to the question of abortion, which Ms. Gaer had already mentioned, he recalled that, according to recent statistics published by the World Health Organization (WHO), 22 million abortions were still carried out each year in dangerous conditions, leading to the death of some 47,000 women. He enquired as to the position of the Holy See on that alarming situation, which mainly affected the poorest population groups.

11. **Mr. Domah** asked whether, in view of the unpleasant events that had taken place and the particular characteristics of the State party, there were plans to establish a permanent structure with a specific mandate to deal with cases of rape and sexual abuse of children.

12. **Mr. Gaye** said that the revised version of the Criminal Code of the Holy See included a definition of torture. He wished, however, to receive more information on the penalties prescribed for acts of cruel, inhuman and degrading treatment and punishment. In particular, it would be interesting to know whether the victims of offences could approach the judicial authorities directly without going through the Promoter of Justice, mentioned in the State party's report.

13. **Ms. Belmir** noted that sexual abuse, which was actually referred to in article 1 of the Convention, was only classed as a serious moral crime in the Criminal Code of the Holy See. She encouraged the State party to review the classification of the most serious offences so that perpetrators did not face exclusively disciplinary penalties. Referring to the case of the "Magdalene Laundries" in Ireland, she said she would like to know whether action had been taken on the observations made by the Committee on the Rights of the Child on that subject. She invited the delegation to clarify the jurisdiction of the judicial authorities of the

State party, as well as the criteria used to determine whether a criminal offence came under the jurisdiction of the pontifical authorities or under that of another State. Noting that children born to women who had been raped by members of the clergy were sometimes taken away from their mothers and deprived of the right to know their parents, whereas the perpetrators of such acts were simply transferred, she asked how the State party planned to remedy that situation.

14. **Mr. Zhang** Kening requested clarification on the different sources of law in the State party and, in particular, on the status of international law in relation to that of canonical law.

15. **The Chairperson** said he welcomed the fact that the State party recognized the Committee's role in the fight against torture, and he commended the Holy See on its efforts to abolish the death penalty. He asked whether law enforcement officers received training on matters such as extradition to countries which imposed the death penalty, the fight against trafficking in persons and the punishment of sexual abuse committed by members of the clergy. The Committee would welcome clarification on the mandate, programme of work and activities of the new pontifical committee for the protection of children. Noting that the draft Criminal Code contained a definition of torture that was in full conformity with the provisions of the Convention and that offences such as the sexual abuse of children and crimes against humanity would now be punished, he asked what measures would be taken to effectively apply those new provisions.

16. **Ms. Gaer** said she took it that the Austrian authorities interpreted the Concordat of 1933 as meaning that they were prohibited from questioning or prosecuting a member of the clergy, provided that he had not been defrocked. Similarly, under the Lateran Treaty concluded between the Holy See and Italy in 1929, members of the clergy were allegedly not bound to provide information to magistrates who requested it. She invited the delegation to clarify those points and to indicate whether there were plans to amend the different treaties concluded between the Holy See and other States to step up the fight against impunity. In paragraph 40 of its report, the State party had indicated that the Tribunal of the Vatican City State had never been involved in providing assistance in any foreign prosecution for the crime of torture. She would welcome clarification on the steps taken by the State party to cooperate in any legal proceedings initiated to address violations of the Convention. Had the Congregation for the Doctrine of the Faith or any other body of the Holy See ever possessed information relating to acts of torture or ill-treatment and transmitted it to foreign authorities? As to the "Magdalene Laundries" scandal, she invited the delegation to indicate the position that the Holy See would adopt if the testimony of members of the clergy was required by the Irish authorities and whether the congregations concerned would be encouraged to pay the victims compensation.

17. **The Chairperson** asked what progress had been made in building the third detention cell mentioned in paragraph 20 of the initial report. Noting the absence of any proper rehabilitation or reinsertion programmes for the victims of acts of torture or their families, he invited the delegation to indicate what measures had been taken in that regard.

The first part (public) of the meeting rose at noon.